

In re ) Fair Hearing No. 20,541  
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Appeal of )

The petitioner appeals a decision of the Department for Children and Families denying her request for emergency assistance with housing. The issue is whether a catastrophic situation exists.

1. The petitioner applied for emergency assistance on September 25, 2006 seeking \$1,900 to pay the first and last month's rent for new housing based on a claim that she was being constructively or illegally evicted from her present housing. Petitioner's application was made on behalf of her spouse, child, and herself. The Department denied the application based on the grounds that petitioner did not have an emergency need as she could remain in her present housing and had not received a rental termination notice.

2. An expedited fair hearing was held on September 28, 2006. Petitioner was represented by counsel. Petitioner's

history with the Department including past denials of emergency assistance are germane to this case.

3. Petitioner last received Reach Up Financial Assistance (RUFA) from August 15, 2005 through December 31, 2005. Petitioner received a Notice of Termination of benefits dated December 7, 2005 explaining that her case would be closed due to the receipt of a lump sum payment in excess of Department resource limits. Petitioner received a lump sum payment of \$40,184.93 on or about October 24, 2005 from the proceeds of a lawsuit. Plaintiff had been attacked by a wolf/dog hybrid.

4. On or about May 30, 2006, petitioner applied for emergency assistance for housing. The Department denied the application alleging that the petitioner did not prove emergency need. The Department noted they could not help as petitioner had not paid rent from December through April at her previous housing.

5. On or about June 17, 2006, petitioner again applied for emergency assistance for housing. The Department denied the application based on the petitioner not providing information; in particular, an accounting of the funds from the lump sum settlement. According to Department records,

petitioner had \$8,000 left from her lump sum as of December, 2005.

6. On or about May 14, 2006, petitioner moved into a house in Bridport. The rent was \$795 per month due on the 15<sup>th</sup> of the month and the deposit was \$500.

7. On July 5, 2006, the landlord sent a notice to vacate by certified mail to the petitioner and her husband. Petitioner testified that she signed for this letter but did not read the letter.

8. In the notice sent on July 5, 2006, the landlord indicated that she had received a total of \$1,100 but that she should have received \$2090 as of that date. Her notice stated that she wanted the petitioner to vacate by July 31, 2006 but if petitioner became current by paying \$1,785 (arrears and July rent), the petitioner could stay.

9. On July 27, 2006, the landlord sent a notice to vacate by certified mail based upon nonpayment of rent. The letter was not signed for and was returned to the landlord.

10. The petitioner found alternate housing and planned to move the beginning of September. The petitioner had packed most of her belongings and stored them in boxes on the porch. Her daughter had an emergency appendectomy the Friday

before Labor Day. As a result, petitioner could not move and lost the house to other tenants.

11. On September 15, 2006 at approximately 12:30 a.m., the petitioner heard knocking. The petitioner's husband let the landlord into the house. The landlord then moved herself into the house. The landlord has not started any court action to have the petitioner evicted.

12. According to the petitioner, they have been living with the landlord in a roommate situation since that time. The situation is not that comfortable as the landlord is having painting done and has rented one of the rooms to a future tenant. The petitioner stated that the landlord wants her house back and the petitioner stated that the landlord first let them know she wanted the house back during May 2006. The petitioner testified that she spoke to a member of the sheriff's office, but that she does not want to put the landlord out although she can legally do that.

13. The petitioner has found another house. The rent is \$995 per month. The petitioner intends to live there with her daughter, not her husband. According to petitioner, if she is helped with the first and last month's rent, she will be able to afford the rent as she has a job offer from her

present landlord to start working part-time as well as another part-time job offer.

14. In terms of the lump sum settlement, petitioner bought a used vehicle in October, 2005 for approximately \$11,200 (includes all fees). Petitioner paid her husband's past due child support totaling \$8,709.93 and repaid her mother an amount between \$2,000 to \$3,000. Petitioner testified that her husband had forged her name to checks. As a result, petitioner gave her attorney approximately \$8,061 to hold which was then used to pay her expenses. This amount totals \$29,970.93 to \$30,970.93 from the lump sum settlement. Petitioner testified that she has no monies left from the lump sum settlement.

ORDER

The decision of the Department denying emergency assistance for new housing is affirmed.

REASONS

The emergency assistance rules provide families with dependent children assistance to meet their emergency needs when those needs cannot be met in any other way. W.A.M. § 2800 et seq. If the emergency needs are caused by a catastrophic situation, the applicant must show that the

catastrophic situation meets the definition found in W.A.M. 2802.

In terms of housing, the regulations provide:

Definition of Catastrophic Situation

For purposes of this section, catastrophic situations are limited to the following situations:

. . .

4. A court-ordered eviction or constructive eviction, as defined at 2802.2, due to circumstances over which the applicant had no control.

A court-ordered eviction resulting from intentional, serious property damage caused by the applicant, or their guests; repeated instances of raucous and illegal behavior that seriously infringed on the rights of the landlord or other tenants of the landlord; or intentional and serious violation of a tenant agreement is not considered a catastrophic situation. Violation of a tenant agreement shall include nonpayment of rent if the tenant had sufficient income to pay the rent and did not use that income to cover other basic necessities or withhold the rent pursuant to efforts to correct substandard housing.

W.A.M. § 2802.1

In addition, constructive eviction has been defined as follows:

Constructive eviction means any disturbance caused by a landlord, or someone acting on the landlord's behalf, that makes the premises unfit for occupation. The motive for the disturbance, which may be inferred from the act, is the eviction of the occupant.

A situation in which the landlord has not provided heat, utilities, or water within a reasonable period of time and there is an agreement to furnish these items shall

be considered a constructive eviction when the applicant is pursuing legal resolution of these offenses. . .

Verifiable battering qualifies as constructive eviction.

W.A.M. § 2802.2

The petitioner is not facing a court-ordered eviction. To terminate a tenancy, a landlord must give proper written termination of the tenancy. 9 V.S.A. § 4467. In the event the tenant remains in possession after the landlord has terminated the agreement, the landlord can bring a legal action for ejectment or eviction. 9 V.S.A. § 4468. A landlord cannot self-help evict a tenant. Vermont law states:

No landlord may directly or indirectly deny a tenant access to and possession of the tenant's rented or leased premises, except through proper judicial process.

9 V.S.A. § 4463(b).

Although the landlord had not succeeded by the time of the expedited fair hearing in dispossessing the petitioner without benefit of court process, the landlord was acting contrary to Vermont landlord/tenant law in trying to force the petitioner out without going through court process. In this situation, petitioner had and still has remedies including an action for injunction to stop the eviction and

an action for any monetary damages, costs and attorney's fees. 9 V.S.A. § 4464(a).

The petitioner has argued that the landlord's actions should be considered a constructive eviction and that using the law to prevent an illegal eviction only puts off the inevitable. Ordinarily, a constructive eviction is defined as a situation in which the landlord is not providing necessary services such as heat or water or where the conditions are so bad that the premises are not habitable. The emergency assistance regulations have broadened the definition to include victims of battering whose safety is compromised by staying in the premises.

Although an illegal eviction may be construed to be a constructive eviction, the petitioner has the ability to use the law to protect her tenancy. The operative part of W.A.M. § 2801.1 holds that a catastrophic situation is one in which the petitioner has no control. The petitioner does have control in this case to prevent the illegal eviction. Petitioner has decided not to use that control; however, her decision does not vitiate the fact that she can. In addition, it is speculative to say that even if the petitioner pursues her remedies for an illegal eviction that petitioner will be facing a catastrophic situation in the



future given that there may be intervening events such as money damages or employment that may make an application for future emergency assistance unlikely.

The Department also argues that petitioner is not eligible for emergency assistance due to other factors. In particular, eligibility is based upon exhausting all available income and resources; the Department questions whether this has occurred. W.A.M. § 2802. However, there is no need to reach these other arguments as a catastrophic situation does not exist.

Accordingly, the Department's denial of emergency assistance should be affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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